In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 758

JOHN LANGENBACHER CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

On facts adequately summarized in the court of appeals' opinion (398 F. 2d 459; Pet. App. 15-23), the National Labor Relations Board found that the Company had threatened three employees with reprisal for their refusal to agree to work for ordinary hourly wages at times when they believed themselves entitled to premium rates, and then refused to recall these employes from a layoff as a reprisal for that action and

certain earlier concerted activity. It found that this behavior violated Section 8(a)(1) of the National Labor Relations Act, 29 U.S.C. 158(a)(1) and ordered that the Company cease and desist from this conduct for the future, offer reinstatement to the three employees, and make them whole for any losses they had suffered as a result of its unlawful conduct. The court of appeals found the Board's decision and order "supported by substantial evidence" and accordingly granted the Board's petition for enforcement.

Petitioner now contends, for the first time, that the employees' refusal to agree to the suggested working arrangement was a breach of the no-strike clause of the collective bargaining agreement. But there was never a work stoppage; the Company never ordered the employees to work under the suggested arrangement, but dropped the matter when they declined to agree to it and returned them to their regular work (Pet. 4). Moreover, even assuming such a breach, the Board found, with court approval, that the reason the Company refused to recall the employees from their layoff was not a desire to discipline them for illegal conduct, but a wish to punish them for the concerted activity for mutual aid and protection in which they engaged and of which it generally disapproved. An employer so motivated violates Section 8(a)(1) of the Act. In essence, petitioner seeks to have this Court undertake its own review of the facts; the petition thus presents no issue warranting further review by this Court.

It is therefore respectfully submitted that the p
tion for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
National Labor Relations Board.

JANUARY 1969.

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